

WASHINGTON STATE EXPERIENCE UPDATE AND A REVIEW OF THE WORK OF THE INTERNATIONAL COMMISSION ON HOLOCAUST ERA INSURANCE CLAIMS (ICHEIC)

A Report by the Washington State Insurance Commissioner's Holocaust Survivors Assistance Office

June 2002

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EXECUTIVE SUMMARY

In February 2000, the International Commission on Holocaust Era Insurance Claims (ICHEIC) launched a world-wide effort to resolve outstanding claims on insurance policies held by victims of the Holocaust. Since then, the members of the ICHEIC have worked to develop standards to evaluate claims, calculate the present value of decades-old policies, and monitor company compliance with agreed-on claims procedures. While considerable progress has been made, many of the same issues that prevented earlier resolution of these issues remain unresolved.

Under the terms of the "Memorandum of Understanding" which established the ICHEIC, the participating companies agreed to publish the names of their Holocaust-era policyholders in order to alert many more Holocaust survivors and their heirs that they may have unpaid insurance claims due them. Two years later, only 10,050 of the 59,244 names posted on the ICHEIC web site have come from the companies; of those, 8,740 came from one company. The remaining names are the result of independent research. The companies continue to resist releasing and publishing the names of their policyholders.

The ICHEIC's original deadline for filing claims has been extended until September 30, 2002, to allow the ICHEIC sufficient time to publish additional names of policyholders on its web site and give adequate time for the public to review the lists.

In July 1999, ICHEIC announced a "fast track," i.e., expedited process of the best documented claims. As of May 3, 2002, 909 claims have been handled through the "fast track" process. Of these, 499 (54.9%) have been declined, and 293 (32.2%) have resulted in offers valued at \$3.1 million. After nearly three years, most of the best-documented claims remain unpaid (67.8%) and 117 (12.9%) claims are still pending.

In February, a monitoring group established by ICHEIC Chairman Lawrence Eagleburger looked at 91 documented "fast track" claims that had been declined (a 10% sampling) and determined that only 20% required no further action, with **80%** requiring corrective action.

As of May 24, 2002, the ICHEIC has received 85,445 claims, 79% of which do not name the company with which the claimant's family had an insurance policy. Offers of payments totaling \$14.8 million have been made to 1,342 claimants, of which 486 have been accepted.

- The ratio of denials to offers continues to be more than 20:1.
- The ICHEIC has made offers on only 1.2 % of **all claims** to date; the percentage of claims to offers accepted is even lower: 0.36%.
- The ratio of offers to claims where the claimant names a company improves to 9.6% (as of May 9, 2002).

Under the claims-handling procedures of the ICHEIC, companies that receive an inquiry regarding a claim are required to respond within 90 days. Nevertheless, most of Washington state's claims have been in the ICHEIC system for well over a year, with little, if any, change of status, suggesting that either the companies are disregarding the agreed-upon rules or the ICHEIC is unable to enforce its own procedures.

On July 17, 2000, the U.S. signed a bilateral accord establishing a “Foundation for Remembrance, Responsibility and the Future” (Foundation Agreement) which included funds intended to cover unpaid insurance policies. The details of the relationship between the German Foundation and the ICHEIC have been the subject of further negotiations since that time. A major dispute emerged over the desire of the ICHEIC companies to be reimbursed \$76 million for their past and future payments to the ICHEIC for payment of **administrative** costs from funds designated to pay claims - a position which has been codified in German law. This issue has contributed to an impasse in the ICHEIC-German negotiations; an agreement between the ICHEIC and the Foundation is necessary before the German funds can be released for distribution to claimants and survivors.

In response to this impasse, the lack of progress made on paying claims submitted through the ICHEIC and the continued lack of cooperation by some companies in supplying policyholders’ names for publication, in September 2001 the National Association of Insurance Commissioners unanimously passed a resolution calling on states to take individual action. To date, eight states have passed Holocaust-insurance related legislation and other states have considered such legislation. Two of those laws have been challenged in the courts.

In November 2001, a congressional committee heard testimony on efforts by the ICHEIC to ensure efficient and appropriate resolution of Holocaust-era insurance claims which revealed “serious deficiencies in the ICHEIC system.” As a follow up, 10 members of the committee called for a change in U.S. policy and requested the State Department to “take the necessary measures to...allow Holocaust insurance lawsuits to move forward.” Federal legislation relating to Holocaust insurance has also been introduced.

Several problems have been identified in the way the ICHEIC processes claims, including:

- The ICHEIC is apparently not using all lists available to it to match names, with certain countries and companies (for example, a policy purchased in the U.S.) considered to be outside the ICHEIC's "scope" of authority.
- More than 19,000 claims have been rejected as being outside the scope of the ICHEIC’s geographic mandate leaving many claimants unaware of the status of their claims.
- Until recently, no independent audits of the companies had been concluded and several audits still remain to be conducted. No comprehensive appeals process is yet in place leaving the claimants receiving “provisional” rejections with no recourse to appeal.
- Serious questions are beginning to be raised about the audit process itself, including whether the audits have been adequately supervised by the ICHEIC.

The ICHEIC agreements are often subject to interpretation by the companies - and sometimes by the ICHEIC staff - leading to non-implementation or only partial implementation. Rules agreed to (such as the publication of names) are often not upheld, resulting in a crisis of confidence and loss of public trust in the process. As a first step to reforming the ICHEIC process, once agreements are made they need to be honored and fully implemented. The NAIC is uniquely positioned to help reform the ICHEIC process and make it more accountable, transparent and fair.

INTRODUCTION*

In February 2000, the International Commission on Holocaust Era Insurance Claims (“ICHEIC”) launched what it described as a world-wide effort “to resolve outstanding claims on insurance policies held by victims of the Holocaust.” The ICHEIC was established in 1998 by the National Association of Insurance Commissioners (NAIC), six European insurance companies (Allianz of Germany, AXA of France, Generali of Italy, and Basler Lebens, Winterthur and Zurich of Switzerland), several Jewish organizations and the government of Israel to create “a just process that will expeditiously address the issue of unpaid insurance policies issued to victims of the Holocaust.” In May 2000, the members of the Dutch Insurance Association also joined the ICHEIC.¹

According to its Chairman, former U.S. Secretary of State Lawrence Eagleburger, “We are guided by the principle that we want to be able to say that we have done everything possible to reach all potential claimants and pay Holocaust-related insurance claims in a fair and expeditious manner.”

The following is a progress report on the work and accomplishments to date of the ICHEIC and the status of Holocaust-era insurance related issues.

* This report updates the December 2000 “A Status Report on Holocaust-Era Insurance Claims” published by the Washington State Office of the Insurance Commissioner (OIC).

¹ See Appendix A for a list of the American affiliates of these and other European companies doing business in Washington State, or contact your state’s Insurance Department and ask for a comparable list.

ICHEIC: BACKGROUND

In 1997, several class action lawsuits in American courts were filed against major European insurance companies for refusing to honor unpaid Holocaust-era insurance policies. These lawsuits brought the issue of Holocaust-era insurance to the attention of U.S. insurance regulators. Under the auspices of the National Association of Insurance Commissioners (NAIC), hearings were held in several cities around the U.S. to gather testimony about the experiences of Holocaust survivors and the families of Holocaust victims in their efforts to file claims on unpaid policies. The Commissioners also heard from the relevant insurance companies. In their defense, the insurers cited among other difficulties, the lack of death certificates and/or policy information by claimants, their own lack of records, and the nationalization of the insurance industry by communist governments in Eastern Europe following World War II.

As a result of the lawsuits, the attention the issue was receiving by American insurance commissioners who were concerned about both the moral issues involved as well as the integrity of the industry since the companies in question were being accused of not honoring insurance contracts, and the threat of increased regulatory action, six major European insurance companies agreed to join an international process to deal with and comprehensively resolve these outstanding issues.² And so the ICHEIC was established.

For nearly three years, the members of the ICHEIC have worked to develop standards to evaluate claims, calculate the present value of decades-old policies, and monitor company compliance with agreed-on claims procedures. While considerable progress has been made, many of the same issues that prevented earlier resolution of these issues remain unresolved.

As of May 24, 2002, the ICHEIC has received 85,445 claims, 79% of which do not name the company with which the claimant's family had an insurance policy. According to present ICHEIC rules these claims will qualify only for a symbolic payment of \$300 for a total of \$20.25 million (assuming all 67,501 qualify for even this minimal payment, which is unlikely).³ Based on the present average offer of \$11,000, the remaining 17,944 claimants who **do know** the names of their families' insurance companies will receive – again assuming all qualify – a maximum total payment of \$197.4 million; together with the \$20.25 million above the total would come to \$217.6 million, or \$2,547 per claimant.

² The six original companies were Allianz, AXA, Basler Lebens, Generali, Winterthur and Zurich. After several months Basler Lebens left the ICHEIC, and in May 2000 the member companies of the Dutch Insurance Association joined the commission.

³ According to ICHEIC Chairman Eagleburger, "a claim that names no company, but is supported by documentation or other credible information substantiating the existence of insurance, would qualify for a humanitarian payment," as would claimants "with evidence of policies issued by companies no longer in existence." [Letter from Eagleburger to Congressman Henry Waxman dated April 11, 2002].

At one point ICHEIC staff recommended eliminating even this symbolic "humanitarian" payment, claiming the administrative costs involved in processing these claims – "over \$10 million" - were prohibitive. However, plans to eliminate the humanitarian payments were scrapped when an alternative funding plan costing less than \$2 million was offered by an American insurance regulator.

PUBLICATION OF NAMES

Under the terms of the “Memorandum of Understanding” (MOU) which established the ICHEIC, the participating companies agreed to publish the names of their Holocaust-era policyholders in order to alert many more Holocaust survivors and their heirs that they have unpaid insurance claims due them.⁴ Nevertheless, more than two years into the ICHEIC’s claims matching process only 10,050 of the 59,244 names posted on the ICHEIC web site have come from the companies. And of those, 8,740 came from one company (Generali). The remaining names are the result of independent research.

The following represents the number of policyholder names provided to the ICHEIC by participating companies as of May 20, 2002. These numbers are virtually the same as at the time of the Office of The Insurance Commissioner’s (OIC) last status report; increases since December 2000 are indicated in parentheses:

- Allianz - 318 (+8)
- AXA - 191 (no change)
- Generali - 8,740 (no change)
- RAS (a subsidiary of Allianz) - 18 (+17)
- Winterthur - 4 (no change)
- Zurich - 20 (no change)
- Member of Dutch Insurance Association - 759 (no change)

The companies continue to resist releasing and having the names of their policyholders published, in some cases citing European data protection laws.

As the above statistics on claims payouts to date indicate, one need only do the math to see that releasing this information will expand the number of claimants who will have the information they need to file an **initial** claim, as well as immediately increase the value of many claims and the resultant total liability of the companies.

⁴ "As part of the audit mandate, the IC (ICHEIC) will address the issues of a full accounting by the insurance companies and **publication of names of Holocaust victims who held unpaid insurance policies**," [emphasis added] Memorandum of Understanding, August 1998.

“FAST TRACK” CLAIMS

In July 1999, ICHEIC announced a "fast track," i.e., expedited process of the best-documented claims.

- As of May 3, 2002, 909 claims have been handled through the “fast track” process. Of those 499 (54.9%) had been declined, and 294 (32.3%) have resulted in offers valued at \$3.1 million.
- Of the 294 offers, 178 (60.5%) have been accepted by survivors and 9 offers (3.1%) have been declined.

After nearly three years, most of the best-documented claims remain unpaid (67.8%) and 117 (12.9%) of those claims are still pending.

In November 2001, Chairman Eagleburger established an Executive Monitoring Committee to "determine how carefully the ICHEIC standards and my [Eagleburger's] decision memoranda are being followed as claims are processed; whether those standards are uniformly applied company by company; what steps within the ICHEIC process need attention; and possible improvements in the process or in the written standards to clarify any ambiguities or other areas of concern."⁵

In February 2002, the monitoring group looked at 91 documented fast-track claims that had been declined (a 10% sampling) and determined that only 20% required no further action; **80%** required “corrective action.”

The monitoring group concluded that “generally the claims were declined incorrectly for one of several reasons including problems with processing by the companies or ICHEIC.”⁶ The group is now working on a plan to resolve those issues.

Status of Fast-Track Claims (as of May 3, 2002)

(Claims submitted by state regulators and the Israeli government as part of an expedited claims procedure)

Total claims submitted	909		
Claims Pending since 1999	117	(12.9%)	
Determinations made	792	(87.1%)	
Breakdown of Determinations			
Claims Denied	499	(54.9%)	
Offers Made	293	(32.2%)	
Offers Accepted	178	(19.6%)	

⁵ Letter from Lawrence Eagleburger to Congressman Henry Waxman dated April 11, 2002.

⁶ Minutes of NAIC International Holocaust Commission Task Force Meeting, March 17, 2002. Reasons for requiring “corrective action” included processing problems, including claims that were incorrectly labeled “declined,” and companies not applying the ICHEIC standards of proof correctly.

“MAIN TRACK” CLAIMS DECLINES VS. OFFERS

As noted above, in February 2000 the ICHEIC launched a two-year worldwide claims process, supported by an advertising campaign and toll-free information hotline in the U.S., Europe, Israel and other countries. As of May 24, 2002, the call-centers had received nearly 232,000 calls and distributed almost 105,000 claim packets. In addition, the ICHEIC website has received nearly 185,000 "hits."

The original deadline for filing claims was February 15, 2002. In February, the deadline was extended until September 30, 2002, "to allow the ICHEIC sufficient time to publish additional names of policyholders on its web site and give 'adequate time for the public to review the lists.'"

Offers of payments totaling \$14.8 million have been made to 1,342 claimants,⁷ of which 486⁸ have been accepted. However, after two years and considering the hundreds of thousands and possibly millions of life, dowry, education, and property insurance policies in force in Europe prior to World War II, with a possible total value in the *billions* of dollars,⁹ the 59,244 names published and 486 claims paid to date by the ICHEIC seem inadequate to accomplish the goals of a fair and comprehensive resolution of the Holocaust-era insurance issue.

- As the chart below shows, the ratio of denials to offers continues to be more than 20:1.
- More disturbing however is the fact that the ICHEIC has made offers on only 1.2 % of **all claims** to date; the percentage of claims to offers accepted is even lower: 0.36%.
- The ratio of offers to claims where the claimant names a company improves to 9.6% (as of May 9, 2002).¹⁰

Status of Main-Track Claims (as of May 24, 2002)

Claims received worldwide since commencement of regular claims process in February 2000

Total insurance claims received worldwide 85,445

In process (new claims, claims on hold, etc)	11,033	(12.9%)
Distributed to insurers for processing	46,768	(54.7%)
"Closed" - invalid, "outside MOU," etc.	27,644	(32.4%)

<u>Breakdown of Claims Distributed</u>	
Provisional Declines	12,690 (27.1 %)
Offers made*	1,048 (2.2 %)
Still under investigation	33,030 (70.6 %)
Total	46,768
*Offers accepted	308

⁷ 294 "fast track" and 1,048 "main track"

⁸ 178 "fast track" and 308 "main track"

⁹ "In 1945 figures, asset seizure was about \$12 billion... The consumer price index has risen to about 15 times what it was then. So we're talking on the order of \$150 billion. How much of that represented insurance? Right now we don't know. I can only suggest it was one of the larger components. The insurance policy, whether it was a dowry policy or a life insurance policy was the poor man's Swiss bank account. So it's clear to us that it is probably either the largest single component or second only to real estate." Elan Steinberg, Executive Director, World Jewish Congress, "Marta's List: The Pursuit of Holocaust Survivor's Lost Insurance Claims," Contingencies, American Academy of Actuaries, July/August, 1998, pages 24-25.

¹⁰ The breakdown of offers-to-claims as of May 9, 2002 is Allianz (including RAS, its Italian affiliate) – 6.3%; AXA – 13.2%; Generali - 11.8%; Winterthur – 5.0%; and Zurich 10.9%.

WASHINGTON STATE CLAIMS - A MICROCOSM ¹¹

Through an arrangement with the ICHEIC, each month OIC receives and reviews reports on the status and progress of claims from Washington state submitted by the OIC to make certain none of Washington's claims is being held up by a claimant's failure to submit a required document, etc. In addition, where possible, an attempt is made to follow up with the relevant company directly to determine why a particular claim has been denied.

According to the latest report dated May 3, 2002, of 259 claims from Washington state 60 have been deemed to be "finalized –valid," with 58 of those claims listed as "declined subject to audit." (Both of the two remaining claims have resulted in offers from companies that have been rejected by the claimants.) In addition, 23 claims were listed as "Finalized - invalid claim" for a variety of reasons: "Replica Claim" (18), "Previously Compensated" (3), and "FSU [former Soviet Union] - Unknown Insurance Company" (2). Fifty-one claims fall under the category of "Other:" "Claim under inquiry" (32); "registered on system" (9); etc. The largest single category of Washington claims is "Claim Sent to MOU [i.e., the participating companies] – awaiting response" (118 claims). This category has remained fairly constant for the past several months. An additional seven claims have been sent to non-MOU companies.

Under the claims-handling procedures of the ICHEIC, companies that receive an inquiry regarding a claim are required to respond within 90 days."¹² Nevertheless, most of Washington state's claims have been in the ICHEIC system for well over a year, with little, if any, change of status, suggesting that either the companies are disregarding the agreed-upon rules or the ICHEIC is unable to enforce its own procedures.

There is no reason to believe that Washington's claimants are being singled out for any reason suggesting that the treatment of Washington's claims may be seen as a microcosm of the claims-handling process for other claimants. On November 30, 2001, Washington State Insurance Commissioner Mike Kreidler wrote to the ICHEIC requesting an explanation as to why the claims-handling procedures of the ICHEIC with regard to the 90-day response time were (apparently) not being upheld.¹³

In its response, the ICHEIC attributed the delay to several factors:

- the large volume of claims received by the ICHEIC
- the fact that "80% of all claims - a much higher figure than anyone expected at the outset - do not name a specific company, contain very little evidence and on average, have to be investigated by three ICHEIC member companies"

¹¹ For a breakdown of claims for other states see Appendices I-L.

¹² "The company will write to you with their findings **within 90 days of their receiving your claim from us**. If the company has not resolved your claim in that time, they will provide you with a status report on their investigation."

¹³ Letter from Washington State Insurance Commissioner Mike Kreidler to ICHEIC Chairman Lawrence Eagleburger, November 30, 2001.

- the difficulty the companies are having dealing with the large volume of claims
- the length of time needed to "agree on how audits of companies should be conducted"¹⁴

Once released, as many as four to five million company policyholder names are to be matched with Israel's Martyrs' and Heroes' Remembrance Authority and Yad Vashem's (incomplete) list of Holocaust victims containing more than three million names, and a new comprehensive list of pre-war German Jews to be compiled. Had the companies released the number of policyholder names that **should** have been published and in the ICHEIC system by now, the number of claims would be significantly higher than 85,445. This raises the question of whether the ICHEIC has the desire or ability, let alone the capacity, to handle the expected volume of future new claims and required names-matching.

STATUS OF WASHINGTON STATE CLAIMS SUBMITTED TO ICHEIC (AS OF 5/21/02)

Claims naming an MOU company	54
Claims naming a non-MOU company	60
Claims that did not name a company	265
Total Claims*	379*
Offers by MOU Companies	2
Declined by MOU companies	75
Company confirmed ownership, awaiting response	6
Declined by non-MOU company	1
Sent to MOU awaiting response	149
Sent to non-MOU awaiting response	9
Residual: either outside ICHEIC scope or still in process with ICHEIC	137
Claims on policies in the former Soviet Union – no company named	13
Duplicate Claims	49
Invalid claims	9
Unnamed claims outside geography covered by ICHEIC	4
Non-life claims, company not named	6
Claims on non-MOU companies; waiting for ICHEIC agreement (Germany & Austria)	42
Claims where claimant did not send documents; company unknown	5
Claims still in process	4
Others (unspecified)	5

Source: International Commission on Holocaust Era Insurance Claims (ICHEIC)

* The discrepancy between the number of Washington claims reported by the ICHEIC (379) and the number of claims submitted to the ICHEIC by OIC (259) is due to claims being filed directly with ICHEIC, which because of "privacy concerns" have not been shared with OIC.

¹⁴ Letter from ICHEIC Vice Chairman Geoffrey Fitchew to Insurance Commissioner Kreidler, January 21, 2002.

THE GERMAN FOUNDATION AGREEMENT: A NEW OBSTACLE TO PROGRESS?

It is critically important that all German insurance companies cooperate with the process established by ... ICHEIC. This includes publishing lists of unpaid insurance policies and subjecting themselves to audit. Unless German insurance companies make these lists available through ICHEIC, potential claimants cannot know their eligibility and the insurance companies ***will have failed to assume their moral responsibility***. (Emphasis added)

- Former Treasury Deputy Secretary Stuart Eizenstat, July 17, 2000

On July 17, 2000, the U.S. signed a bilateral accord establishing a “Foundation for Remembrance, Responsibility and the Future” (Foundation Agreement) intended to close “the last chapter of the Nazi past that had still been open” by compensating former slave and forced laborers “as a long overdue humanitarian gesture.”¹⁵ Included in the agreement were funds intended to cover unpaid insurance policies. Since that time, the ICHEIC, the German Foundation and the German Insurance Association have been negotiating terms to bring additional German insurers into the ICHEIC process, thereby expanding both the number of companies and the percentage of insurance (now between 30-35% of the market) sold during the relevant period. After nearly two years, no agreement has yet been reached.

BACKGROUND

In the Fall of 1998, in response to lawsuits filed against German insurance and banking institutions in American courts earlier that year, negotiations began for the creation of a foundation to be funded by German corporations and the Republic of Germany for the benefit of victims of National Socialism - particularly those who suffered as slave and forced laborers at the hands of German industry. The negotiations, chaired by then-Under Secretary of State Stuart Eizenstat, Federal Minister Bodo Hombach and later special German envoy Count Otto Lambsdorff, included U.S. class action attorneys, the Conference on Jewish Material Claims Against Germany (Claims Conference), the World Jewish Congress, German business enterprises and the governments of Israel, Poland, Belarus, Ukraine, and the Czech Republic.

In December 1999, the negotiators agreed on a fund totaling 10 billion DM (approximately \$5 billion). Half was to be funded by German businesses and half by the German government. The fund was also expanded to cover not just claims for slave and forced labor but all remaining outstanding claims, including against German insurers.¹⁶

In March 2000, the negotiators agreed on a distribution plan for the 10 billion DM, with 81% of the funds set aside for labor payments (slave and forced), 10% for Jewish property compensation, including insurance, 7% for support of a "Remembrance and Future Fund" to promote education and projects related to international understanding and the interests of heirs

¹⁵ German Chancellor Gerhard Schroeder, press conference, July 17, 2000.

¹⁶ “German Foundation Chronology of Key Events,” U.S. Diplomatic Mission – Information Resources Center, July 17, 2000.

and survivors, and 2% for administration costs. Each slave laborer is to receive up to 15,000 DM [approximately \$7,000] and each forced laborer up to 5,000 DM [approximately \$2,336].¹⁷

INSURANCE CLAIMS

Compensation to cover insurance-related claims totaling up to 550,000 DM was to come from the 10% or 1 billion DM set aside for Jewish property, with 150 million DM allocated for direct insurance claims "for which there is clear documentation" (plus 50 million DM in interest earnings and 100 million held in reserve for unanticipated claims), and another 350 million to cover "humanitarian" payments related to heirless insurance claims "in which the certitude of the documentation has been eroded by the passage of time." In April 1999, the German Association of Insurers announced its support and participation in the Foundation Initiative, pledging to pay 500 million DM into the fund. The details of the relationship of the German Foundation and the ICHEIC were left to be finalized and have been the subject of further negotiations since that time.

According to ICHEIC Chairman Eagleburger, "At present, two significant issues remain unresolved: the process whereby German companies will produce lists of policyholders to be published on the ICHEIC web site, and whether, and the extent to which, MOU companies will be reimbursed from funds earmarked for the ICHEIC, for monies previously given for the ICHEIC expenses."¹⁸

"LEGAL PEACE"

Among the elements of the Foundation Agreement was the granting of "legal peace" for German companies through which 55 lawsuits in U.S. courts against several hundred German companies were consolidated and dismissed. "Legal peace" also precludes future claims in U.S. courts by Holocaust survivors against German entities for Holocaust-era economic crimes. The U.S. Justice Department will instead file "Statements of Interest" stating that the U.S. Government believes that the German Foundation should be regarded as the exclusive remedy for such cases, that dismissal of the suit would be in the foreign policy interests of the United States Government, and recommending dismissal on any valid legal grounds.

In addition, the U.S. agreed to take "all appropriate steps to oppose state and local actions against German companies arising out of the Nazi-era claims in the United States that threaten to undermine the legal peace we seek."¹⁹

These German companies are now, in effect, be under the protection of the U.S. government, despite the fact that not all claimants will qualify under the German Foundation Agreement and will have no other recourse to seek justice. Other survivors will be told to "take what is being offered or leave it."

¹⁷ Annex A of the Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany concerning the Foundation "Remembrance, Responsibility and the Future," Berlin, Germany, July 17, 2000. As of May 28, 2002, 253,546 claims worldwide have been received, with first payments of \$4,400 totaling over \$435 million being approved for over 98,870 former slave laborers.

¹⁸ Letter from Eagleburger to Congressman Henry Waxman dated April 11, 2002.

During the German Foundation negotiations, the German companies insisted their government hold out on an agreement until **all** the companies/industry groups were guaranteed “legal peace,” i.e., until all lawsuits in U.S. courts were consolidated and dismissed. Lawyers representing survivors agreed and in December 2000 Judge Michael Mukasey, Chief Judge of the U.S. District Court for the Southern District of New York ordered the cases dismissed.²⁰

“Legal peace” thus removed one of the most significant tools of leverage against German corporations and financial institutions and has served to seriously undermine the effectiveness of state laws (like Washington state’s “Holocaust Victims Insurance Relief Act”) meant to protect the rights of Holocaust survivors and their families.²¹

A major new dispute emerged over the desire of the ICHEIC companies to be reimbursed \$76 million for their past and future payments to the ICHEIC for payment of **administrative** costs from funds designated to pay claims - a position which has been codified in German law. This issue has led to an impasse at the present time in the ICHEIC-German negotiations. According to one American regulator, “the companies’ cost plan is inappropriate legally, politically and morally;”²² a spokesman for the U.S. State Department has accused the American regulators and representatives of the Jewish organizations of being “obstructionists” for their very different understanding of what the terms of the U.S.-German Executive Agreement mean with regard to this issue.²³

In the meantime, as the American regulator has pointed out, “under the U.S.-German Executive Agreement and the German law authorizing the creation of the Foundation, an agreement between ICHEIC and the Foundation is necessary” before the German funds can be released for distribution to claimants and survivors.²⁴

¹⁹ Statement of Stuart Eizenstat, December 17, 1999.

²⁰ The class action attorneys apparently agreed to the dismissal of the lawsuits on the theory that the German Foundation would “offer elderly Holocaust survivors much more prompt payments than lengthy, uncertain litigation.” (Eizenstat letter to former Washington State Insurance Commissioner Deborah Senn, January 12, 2000).

²¹ The Justice Department, in fact has filed legal briefs **in support of the companies** in both *Gerling Global vs. Gallagher* (FL) and *Gerling Global vs. Low* (CA), despite being asked by members of Congress not to do so (see below).

²² Illinois Insurance Director Nathaniel Shapo, e-mail of February 1, 2002, to other U.S. Insurance Commissioners.

²³ Letter from Illinois Insurance Director Shapo to Ambassador J.D. Bindenagel, former Special Envoy [U.S.] for Holocaust Issues, February 12, 2002.

²⁴ Illinois Insurance Director Shapo, e-mail of February 1, 2002, to U.S. Insurance Commissioners.

SIDEBAR: THE QUESTION OF “RESTITUTION”

The German insurance companies have consistently claimed that their liability for all unpaid insurance claims was transferred to the German government and was covered by the various post-war German restitution programs.

This position was supported by Rudolph Gerlach, former Department Chief, German Federal Regulatory Agency for Insurance Practices:

The vast majority [over 70%] of policies belonging to victims of the Holocaust were included in [German compensation] programs... Only unpaid premiums and payments that the policyholder himself had received were deducted. Payments to government authorities were not considered... Since the victim of Nazism has received full compensation according to the applying rules there is no legal basis for further claims concerning the same insurance policy.²⁵

As part of the German Restitution program, German insurance companies were asked to provide policyholder information to the Bundesentschädigungsgesetz, or BEG [the German indemnification program established 1952] to assist in determining the number and value of valid claims. Yet, when asked to provide copies of this information, some of the companies have maintained that the BEG information is confidential, that they are prohibited by German law from sharing it and that even they (the companies) cannot always get it. Only a claimant, beneficiary or heir can request this information on a case-by-case basis.

However, an estimate of the number and estimated total value of the outstanding insurance policies in force between 1933 and 1945 and a comparison of that information with the portion of BEG payments **covering insurance** would tend to support the companies' contention that these claims have been paid.

In a January 1997, essay "German Restitution for National Socialist Crimes" distributed by the German Information Center, reference is made to 735,076 claims having been made on the basis of the Bundesrückerstattungsgesetz or BruG (Federal Restitution Law, 1957); “with a few exceptions, they have all been settled.” This reference actually strengthens the argument for releasing the policyholder information; i.e., each of these claims was paid for a reason, and if that reason included an outstanding insurance claim then a record of that claim and the link between the claim and the BruG payment must exist somewhere. The companies cannot simply claim their liability has been met unless and until a link has been made between each outstanding insurance claim and a payment made by the BruG **on that specific unpaid policy**.²⁶

The position of the German Federal Regulatory Agency for Insurance Practices (BAV) seems to be based on the assumption that many/most claims were simply “reinstated” after the war and

²⁵ Washington Conference on Holocaust Assets, December 1998.

²⁶ We are not referring here to the **names of the recipients**; regardless of whether such information could be a violation of German privacy laws, what is needed is a **breakdown of restitution payments by category**.

that claims were in fact paid out to **living** policyholders. However, we know that while there were many policies that were either confiscated or whose proceeds were placed in blocked accounts only to be confiscated later at the time of emigration (or deportation), many policies were obviously held by people who were deported **and murdered**. Thus, **the full face value** of the policy should have been paid to the beneficiary or heir as a result of the insurance event, i.e., the death of the insured.

This question continues to be relevant: the GDV (German Insurance Association) in its letter to Congressman Dan Burton, Chairman of the House Committee on Government Reform dated October 22, 2001, asserted "...we draw your attention to the extensive restitution and compensation programs for Holocaust victims set up in Germany. **These compensation programs...also included insurance assets, so that very few policies remain unsettled today**" [emphasis added].²⁷

We continue to believe the companies, the German government or whoever else has policy information should make it available, even if only in a sanitized version to "protect" the names of the policyholders.

If the German companies want to keep raising restitution as a defense, they should be expected to document it.

²⁷ Letter from GDV (German Insurance Association) to Congressman Dan Burton, Chairman of the House Committee on Government Reform, dated October 22, 2001.

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC)

Describing the lack of progress in the ICHEIC-German Foundation negotiations as “a matter of utmost public concern” and the “Foundation’s proposal to allow the German companies to recoup \$76 million intended to benefit Holocaust survivors and their heirs as unacceptable,” the National Association of Insurance Commissioners (NAIC) in September 2001 unanimously passed a resolution which called on individual states to

...as appropriate, take any or all of the following steps as allowed by law: reevaluate the formal or informal “safe harbor” provisions given to affected insurers; hold hearings about the German Foundation-ICHEIC negotiations and also about the progress made by ICHEIC member companies in processing and paying legitimate claims; and make filings in relevant court cases involving the matter of unpaid Holocaust-era insurance claims.

The resolution also took note of the “disappointing” progress made on paying claims submitted through ICHEIC and the continued lack of cooperation by some companies in supplying policyholders’ names for publication.²⁸

At its Winter Quarterly Meeting held on December 9, 2001, the NAIC’s International Holocaust Commission Task Force membership voted to endorse and support a proposal by Florida to establish a long-term home health care plan for Holocaust survivors. The program would be paid for with residual funds from the Swiss Bank settlement. States were asked to collect their own data to determine the number of survivors living in their states who might opt to participate in such a program. The collected data will be compiled and presented to the court to determine whether some of the Swiss fund money can be reallocated for Holocaust survivors in the U.S. and a national plan established.²⁹

At last report, 14 states have responded and the data was being compiled and studied.

²⁸ National Association of Insurance Commissioners (NAIC), adopted September 5, 2001; see Appendix B or link to NAIC web site, www.NAIC.org

²⁹ Minutes of NAIC International Holocaust Commission Task Force Meeting, December 9, 2001

STATE ACTION: **UPDATE ON LEGISLATION AND THE STATUS OF LEGAL CHALLENGE**

Many observers believe that it was the threat of regulatory action (and litigation - see below) that led the European insurance companies to join the ICHEIC in the first place. Since 1998, several states have taken actions on behalf of survivors and heirs with unpaid insurance claims. One of the purposes of state-enacted Holocaust insurance laws was to motivate additional insurance companies to join the ICHEIC process rather than face further state regulation. However, there have been legal challenges to the laws in Florida and California. The following is an update on the present status of state laws addressing the Holocaust insurance issue and the legal challenges they face.*

FLORIDA

The “Holocaust Victims Insurance Act” (Section 626.9543, Florida Statutes) passed the Florida legislature unanimously and was signed into law in May 1998. The Act provides several forms of relief for Holocaust victims, survivors and their families, and imposes severe penalties on companies that refuse to produce information relating to outstanding World War II-era insurance claims or otherwise cooperate with the Department of Insurance.

After then-Florida Insurance Commissioner Bill Nelson issued subpoenas to 40 insurance companies not fully in compliance with state law requiring them to turn over information about Holocaust survivors’ policies, the statute was challenged in federal court in November 1999 by Gerling Global Reinsurance Corporation of America, a German insurer with affiliated businesses in the United States. On October 2, 2001, the 11th Circuit Court of Appeals ruled on appeal that the state law violated the Due Process Clause of the U.S. Constitution because it regulates a subject and transactions that have insufficient connection with Florida.³⁰ The state has not sought review of the court’s ruling.

NEW YORK

In June 1997, New York Governor George Pataki established the Holocaust Claims Processing Office as part of the New York State Banking Department to serve as a “clearinghouse” for insurance claims from many states to the ICHEIC and to provide institutional assistance to individuals seeking to recover Holocaust-looted assets, including insurance.

In 1998, the New York legislature unanimously passed the Holocaust Victim’s Insurance Act (Chapter 259 L 1998) which requires all insurance companies licensed in New York State to supply the State Superintendent of Insurance with essential information, including:

- The approximate number and total value of all unpaid insurance policies that have been issued to Holocaust victims;
- Any attempts that have been made by the insurer over the years to locate beneficiaries of policies issued from 1920 to 1945 that might pertain to a Holocaust victim, and;

* Of course, as was pointed out at the most recent NAIC International Holocaust Commission Task Force Meeting held on June 9, states do not need to pass special Holocaust insurance laws to take action against non-cooperative companies; existing laws already give regulators the authority to do so.

³⁰ Judge Stanley Marcus, decision of 11th Circuit Court of Appeals, *Gerling Global v Gallagher*, October 2, 2001.

- The number of claims filed by Holocaust victims and whether or not payment was made on each of those claims.

WASHINGTON STATE

The “Holocaust Victims Insurance Relief Act” (Chapter 48.104 RCW) was unanimously passed by the legislature and signed into law on April 15, 1999. Provisions of the law include:

- The establishment of a Holocaust Survivor Assistance Office to assist Holocaust survivors and/or the families and heirs of Holocaust victims recover proceeds from insurance policies and other assets that were improperly denied or processed;
- The creation of a Holocaust Insurance Company Registry containing company records of companies doing business in Washington state and their corporate parents as well as other pertinent information about victims of the Holocaust to determine if any of the carriers were involved in issuing or denying Holocaust-era coverage thereby allowing their heirs to pursue potential claims, and;
- An extension of the statute of limitations for insurance policies issued to Holocaust survivors and victims until December 31, 2010, thereby enabling Holocaust survivors or victims’ families to sue insurance companies for failure to address those claims.

The Washington law provides “safe harbor” for companies participating in the international commission process in good faith and working through ICHEIC to “resolve all outstanding claims with offers of fair settlements in a reasonable time frame.” Failure of the ICHEIC to resolve these issues could trigger presently suspended provisions of the Washington law up to and including fining companies and/or suspending their certificates of authority (licenses), which in turn could result in further litigation.

Commissioner Kreidler has expressed concern with the level of cooperation from many of the European companies in the Holocaust-era insurance claims process and his belief that the American affiliates of those European companies licensed to do business in Washington state should use their influence to get the European companies to release their policyholder names. In April 2001, the OIC posted a chart on its website of American affiliates of European insurance companies with policies in effect in Europe between 1933 and 1945 according to reports filed with the OIC under the Holocaust Victims Insurance Relief Act of 1999.³¹ OIC has also posted the names of companies that **have** provided policyholder names for insurance policies in effect in Europe between 1933 and 1945. Those policyholder names are available on the OIC website (www.insurance.wa.gov).

CALIFORNIA

In 1998, California enacted a law requiring the Department of Insurance to develop a comprehensive program to resolve the insurance claims of Holocaust victims, survivors and their heirs (Section 354.5, California Code of Civil Procedures). The new law gave California courts

³¹ See Appendix A. These companies have not provided names to the OIC but have asserted various legal objections or defenses.

jurisdiction over claims by California claimants and extended the statute of limitations for filing a claim until December 31, 2010.

That same year a second law (Section 790.15 of the California Insurance Code) was passed requiring the Commissioner of Insurance to “suspend the license of any insurer if it or one of its affiliates fails to pay “any valid claim” on a policy issued to a person who was “a victim of persecution of Jewish and other people preceding and during World War II by Germany, its allies, or sympathizers.”

In October 1999, the Holocaust Victim Insurance Relief Act (“HVIRA,” California Insurance Code §§13800 -13807) was passed, requiring the Insurance Commissioner to establish and maintain a registry regarding insurance policies issued in Europe to victims of the Holocaust during the Nazi period.

In April 2000, just prior to the registry provision taking effect, “HVIRA” was challenged in federal court by several affected companies and the American Insurance Association. They asserted that insurance commissioners do not have the authority to require them to provide information about company business practices outside of the state that he or she regulates.

In a ruling in June 2000, in the Eastern District of California, an injunction was granted preventing enforcement of the statute.³² The decision was appealed by the state. On February 7, 2001, the 9th Circuit issued an opinion dismissing two of three challenges to the California law saying the law did **not** interfere with the ability of the federal government to conduct foreign policy nor violate the Commerce Clause of the U.S. Constitution by obstructing international commerce. A third issue – due process – was sent back to the original court, which once more found in favor of the companies.³³ The matter is now again on appeal before the 9th Circuit, where oral arguments were heard on May 8, 2002. Washington state filed an amicus brief in support of California, maintaining that it is constitutional for states to require international insurers or holding company groups to provide the names of their policyholders on Holocaust-era policies issued by their European affiliates.

In OIC’s opinion, if the companies succeed in overturning state law in this case, it will send a ripple affect across the nation, effectively diminishing the authority of insurance regulators to regulate unfair business practices.³⁴

As this report goes to print the court’s decision is pending.

MINNESOTA

The “Holocaust Victims Insurance Relief Act” (General Insurance Powers, Section 60A.0530) was signed into law in April 2000. The law requires Minnesota’s Commissioner of Commerce to

³² Gerling v. Low, U.S. District Court for the Northern District of California.

³³ Decision of Judge William B. Shubb, U.S District Court, Eastern District of California, Gerling Global v Harry Low, No. CIV. S-00-0506 WBS JFM

³⁴ OIC Press Release, February 15, 2002.

assist Holocaust victims, heirs or beneficiaries in recovering proceeds from improperly denied or processed Holocaust-related insurance policies. It also authorizes the commissioner to establish and maintain a central registry containing records and information relating to insurance policies of Holocaust victims.

MARYLAND

Maryland's "Holocaust Victims Insurance Act" took affect in May 2001. As defined by the law, its purpose is "to implement the Holocaust Victims Insurance Act by establishing procedures and standards for:

- The diligent and expeditious investigation of insurance claims of Holocaust victims by insurers;
- The use of alternative documentation to substantiate the insurance claims of Holocaust victims, and;
- Computing interest on the face or other pay-out value of an insurance policy or annuity issued to a Holocaust victim; and
- Filing reports that the Commissioner may direct an insurer to file relating to insurance claims of Holocaust victims."

Both Texas (HB 845) and Arizona (HB2541) have passed legislation extending the statute of limitations for filing a Holocaust-related insurance claim, and Massachusetts is presently considering Holocaust Insurance legislation (Senate Bill 741) similar to Washington, California and Minnesota. In addition Illinois, Rhode Island and New Jersey have considered legislation.

THE VOICE OF CONGRESS

Congress has held several hearings on issues relating to Holocaust restitution. The most recent was on November 8, 2001, when the Committee on Government Reform heard testimony on “efforts by the ICHEIC to ensure efficient and appropriate resolution of Holocaust-era insurance claims.” According to a committee staff report, the hearing revealed “serious deficiencies in the ICHEIC system,” in particular noting testimony that the participation of the insurance companies has been “marked by delay and obstruction,” that the companies had failed to provide comprehensive lists of policyholder names, and that standards for resolving claims “have been ignored or inconsistently applied by the companies.”³⁵

Among recommendations the committee heard were that the:

- U.S. file “Statements of Interest” (see above) **only** on behalf of companies that are participating in good faith in the ICHEIC process;
- U.S. government apply pressure on the German government and the German Insurance Association to conclude negotiations with the ICHEIC “in accordance with existing ICHEIC rules and standards;”
- ICHEIC open up its process, meetings and finances to public scrutiny to ensure greater transparency, and;
- ICHEIC create an independent monitoring mechanism to “review decisions before they are sent to claimants to make sure they are consistent with ICHEIC rules for accepting and valuing claims.”

As a follow-up to the hearing on January 7, 2002, ten members of the committee wrote to Secretary of State Colin Powell. In their letter they shared their conclusions, based on the hearing, that most of the ICHEIC companies had failed to live up to their commitments to publish policyholder names and their financial commitments, or comply with Chairman Eagleburger’s decisions. Barring a change in the companies’ position, the members asked for a change in U.S. policy and requested that the State Department “take the necessary measures to withdraw the letters of intent filed with the court and allow Holocaust insurance lawsuits to move forward.”³⁶

In this regard, four previous letters from members of Congress are also of interest:

- On September 11, 2000, seven members of Congress wrote to former Solicitor General Seth Waxman urging that the U.S. **not** file a brief in support of European insurance companies challenging California’s Holocaust Victims Insurance Relief Act. They expressed concern that such a brief would “ruin the chance for many of our constituents to reclaim Holocaust-era insurance policies.” According to the members, the California law “is one of the only remaining sources of leverage to pressure [the

³⁵ “The Status of Insurance Restitution for Holocaust Victims and Their Heirs,” Minority Staff, Committee on Governments Reform, U.S. House of Representatives, November 13, 2001.

³⁶ Letter to U.S. Secretary of State Colin Powell, dated January 7, 2002 and signed by ten members of Congress; see Appendix C.

companies] to cooperate...a brief filed by the U.S. government ...could help set a precedent for prematurely dismissing other class action suits brought by Holocaust survivors and cut off the viability of individual claims.”³⁷

- On September 29, 2000, 47 members of Congress wrote to ICHEIC Chairman Eagleburger to share their concern at the “alarming rate of rejection of claims processed through the ICHEIC.” The members expressed “shock” that the German Foundation agreement would also resolve insurance claims, that placing a cap on the companies’ liability will “decrease the leverage of the U.S. government to pressure them to cooperate,” and that the companies “should not be immunized without full accountability for repaying what they owe.” The members “strongly object[ed] to the idea that the U.S. government will be working for the dismissal of class action law suits considering that the courts have provided the only recourse for survivors and their heirs.” Finally, the members called for a de-linking of the ICHEIC from the German Foundation settlement “until the system’s flaws are addressed” in order not to hold up slave labor payments.³⁸
- Eight members of the Florida congressional delegation wrote to then-Attorney General Janet Reno on October 25, 2000, to express their concern about “the serious implications” the Solicitor General’s filing in *Gerling Global vs. Low* (CA) would have for the interests of Holocaust survivors and their heirs under Florida’s Holocaust Victims Insurance Act: “If the Justice Department is correct that the states cannot elicit the information we have sought through the NAIC, then the United States has effectively lost all leverage in its efforts to account for one of the largest categories of theft from Holocaust victims.” The members observed that after 20 months the ICHEIC had “failed to deliver so far on basic elements of a valid process.”

Of “greatest concern” to the members of Congress was the fact that “the Department of Justice says, and we must face the possibility that the Courts may agree, that States cannot require companies with business links in their states to disclose such crucial information, which Holocaust victims and their heirs have virtually no other means to obtain.” As a consequence, they announced plans to introduce legislation “to ensure that insurers are held accountable and that survivors and heirs are compensated for policies sold to individuals who became victims of the Holocaust.”³⁹

- Finally, on February 12, 2001, 12 members of Congress wrote to then-newly inaugurated President George Bush again expressing concern at the granting of “immunity” to the European companies despite the fact that they “had failed to comply with the basic claims approval standards of the ICHEIC or its requirements to

³⁷ Letter to U.S. Solicitor General Seth Waxman signed by seven members of Congress, dated September 11, 2000; see Appendix D.

³⁸ Letter to ICHEIC Chairman Lawrence signed by 47 members of Congress, dated September 29, 2000.; see Appendix E.

³⁹ Letter to Attorney General Janet Reno signed by eight members of Congress, dated October 25, 2000; see Appendix F.

publish the names on dormant accounts.” According to the signers of the letter, it is “only through the diplomatic pressure of our government and the leverage of U.S. courts that we have come this close to achieving a dignified resolution.” The members called on the new president to appoint an envoy to oversee enforcement of the companies’ commitments.⁴⁰

Several members of Congress have also introduced legislation. Most recently, Reps. Henry Waxman (CA) and Elliot Engel (NY) sponsored HR 2693, which would require all insurance companies doing business in the U.S. to publish information on their policies in effect between 1933 and 1945. The bill also provides for a comprehensive list of policyholder names from these companies to be published and publicly disseminated through a Holocaust Insurance Registry at the National Archives.

⁴⁰ Letter to President George Bush dated February 13, 2001, signed by 12 members of Congress; see Appendix G.

PROCESSING PROBLEMS

The OIC's December 2000 Status Report outlined several problems with the ICHEIC process. As this report has shown, 16 months later many of these same problems remain and new problems have emerged.

■ Some examples of claim rejections:

- A Washington resident's claim was rejected by Generali, even though the company acknowledged her father had purchased a 20-year policy in 1926, paying for the policy in full at the time of its purchase. Nevertheless, the policy inexplicably seems to have "disappeared" from the company's records by 1936. Generali considers the policy to have been cancelled before 1936 because it no longer appears on the company's books. Generali wrote to the claimant that "we cannot but conclude that [the policy] was either cancelled or surrendered before 1936."

Yet Czechoslovakia, where the family lived, was not occupied until 1938 and the family suffered no economic setback that would have required it to "cash-in" the paid-up policy. The "provisional" denial of this claim would appear to violate the ICHEIC's "relaxed standards" through which cases of doubt are supposed to favor the claimant, unless the "negative evidence" - in this case the absence of the policy information on Generali's ledger - is backed up by "sufficient supporting evidence being available from the audit process and elsewhere to show that the company records in question are trustworthy and comprehensive" (see section on "Audits" below).⁴¹

- A second Washington resident filed a claim with Generali on behalf of his uncle on the basis of the uncle's name appearing on the ICHEIC website list. At first, one would consider this an example of the claims process working, regardless of the eventual outcome: a list of names provided to the ICHEIC and made available to potential claimants through the ICHEIC website resulted in a claim being submitted for processing.

However, Generali initially did not indicate to the claimant **why** his claim was denied. The uncle's name and city of residency matched the name on the ICHEIC list. Obviously a match between the name and the city of residence alone do not necessarily indicate that this is the same person. But Generali gave the claimant no indication as to why it had determined it was **not** a match. Only later did the company indicate it had concluded the claimant's uncle was not its policyholder on the basis of the different family status and professions of the two; however, this too is inconclusive given the very limited information the claimant has about his uncle.

- A third claim was "provisionally" rejected by Generali based on the policy in question not being in force during the Holocaust era. Although the company was given the correct information in the Washington claim, apparently it used the **wrong** information in

⁴¹ Eagleburger ruling of September 2001.

processing the claim: the owner of the policy "not in force" had the same name, but a different birth date than the claimant's father; the two were in fact not the same person. Nevertheless the claim was denied.

- Finally, a fourth Washington claimant with knowledge of her father's policy number was told by a company representative of Generali in **November 2000** that she was close to receiving an offer on her claim. In December 2000, the claimant received a letter from the company confirming that their investigation of her claim had had a "positive outcome," and asking her for some additional information (a copy of her father's will), which she then forwarded to the company. In March 2001, she received another letter from Generali acknowledging receipt of the requested information and suggesting that an additional cycle of research was necessary. That was more than one year ago; the claimant still has not received an offer for her claim.

■ The ICHEIC is not using all lists available to it to match names, with certain countries and companies (for example, a policy purchased in the U.S.) considered to be outside the ICHEIC's "scope" of authority.

For example, when a claimant files a claim and **knows** and/or states the name of a company, regardless of whether that company is a MOU company or not, the ICHEIC will attempt to match the claim with its list of Holocaust-era policyholders.

But if the claimant does not know or list the name of the company, the ICHEIC will make no effort to match the claimant's family member(s) with its list of all known policyholders, deeming non-MOU company policyholder names to be outside the scope of the ICHEIC's present authority. The ICHEIC is supposed to be a **claims resolution process** and, as such, should be using any and all information available to it to resolve Holocaust-era insurance claims. Apparently the ICHEIC is not. In the ICHEIC's defense, it has been suggested that the ICHEIC companies cannot reasonably be expected to pay for processing the claims of other companies. However, the ICHEIC was established to resolve claims and the assumption has always been that additional companies would join the process, thereby spreading the cost. Furthermore, if the process should stay limited to the five or six companies, only 30-35% of the market will have been covered. If the ICHEIC already has the policyholder names entered into its database, any additional costs of matching would be incidental.

The ICHEIC staff has responded to this question by saying that if a claimant names a company, "even if the policy was issued outside the ICHEIC geography, and we know that the company will consider claims...then we send it. But if it's unnamed, or the named company has not agreed to handle [it], we have to keep it on hold. We'll also try to match in the research database, if unnamed, and then send to the identified company."⁴²

As an example and variation of the above, the Austrian government recently established a web site [www.nationalfonds.org] which lists the names, companies, and policy numbers, etc., taken

⁴² E-mail from ICHEIC staff, February 13, 2002.

from the Austrian State Archives of Holocaust-era insurance policyholders from Austria who were potential victims of the Holocaust.

The web site's introduction states that the (Austrian) list was "guided by the standards of the ICHEIC," and that the original documents were scanned and forwarded to the ICHEIC.

However, the ICHEIC chose to place only the **policyholder** names on its web site even where many of the corresponding company names are known and listed by the Austrians. While some Generali listings do appear, many/most (?) do not. (For example, the father of a Washington claimant with an acknowledged claim against Generali appears on both the Austrian and ICHEIC lists but appears on the ICHEIC list without the name of the company.)

OIC has asked the ICHEIC to explain why, at the same time it laments that 79% of claimants do not know the name of their families' insurance companies making efforts to match their claims more difficult, it has not used all available information to assist claimants match their claims with companies. Wasn't the ICHEIC list intended for that purpose?

The ICHEIC staff responded that it is not publishing this information ("dates of birth and policy numbers") for fear that false claims might be filed based on the web site information.⁴³ But if a family has a valid claim to an unpaid policy, it should be paid. The key to the claim is not the divulging of a previously unknown company name or policy number but proof of a relationship to the original policyholder and a reasonable assumption that the policy was never paid. The ICHEIC should be a names-driven process, not a claims-driven process.

The ICHEIC initially gave no reason for not listing company names but when asked in a follow-up exchange about this decision, the ICHEIC staff replied that in addition to fear of "fraudulent claims," the ICHEIC chose not to publish company names on its website because of "company sensitivity." "The companies were not happy about their names appearing on the website against policyholders, unless they had provided the lists [emphasis added]. This was increased in relation to companies which were not members of the ICHEIC. In the context of negotiations with the German Foundation this was seen as an important point."⁴⁴

The ICHEIC staff added one final point about concern about the "accuracy of the lists:" "This too came from the companies... They... felt under attack in relation to the publishing of their own policies, until the lists were cleaned to relate to holocaust (sic) victims... I doubt if the German companies or the German Foundation would be happy if we unilaterally published company names on the list we had."⁴⁵

Thus, a "Catch-22" exists: the companies haven't/won't release their own names, but also object to publishing the names of policyholders together with company names resulting from independent research. But the companies have the option of joining the ICHEIC. Perhaps it

⁴³ E-mail from ICHEIC staff, March 11, 2002.

⁴⁴ E-mail from ICHEIC staff, March 18, 2002.

⁴⁵ Ibid.

would be better to simply say "the companies didn't want the policyholder/company information to be made public so the ICHEIC accommodated them."

The Austrian insurance companies agreed to the publication of insurance policy records on their government's website. One would think that what's good enough for the Austrian insurers should be good enough for the ICHEIC.

■ A further question was asked about whether the ICHEIC shares information about matched claims with claimants. After all, one would think claimants have a right to be on an equal footing with the companies, which **do** receive information about any matches, in order to assist claimants pursue their claims – if necessary - through the appeal process.

The response from the ICHEIC staff was that matches were in fact **not** shared with the claimants:

There is still a view from the companies that these matches...cannot be conclusive. Apart from that there are two points of view: one, that it would help the claimant to know that documents exist proving his/her belief that a contract existed; the other that a match doesn't mean that there will be a payment, so we shouldn't raise hopes only to dash them, until the end of the process. Of course, when the decision gets made, the claimant should have all the information, and all documents, in the appeal process.⁴⁶

■ More than 19,000 claims have been rejected as being outside the scope of the ICHEIC's geographic mandate. Yet, despite corrections having been made to the maps used to determine the correct borders (thereby potentially bringing many of these claims back under the geographic authority of ICHEIC) not all of the previously rejected claims have been restored to the ICHEIC claims system - admittedly a very costly proposition - due to the lack of sufficient funds to continue this important research. Consequently, many of these claimants may be unaware of the true status of their claims.

■ **AUDITS:**

With all that is wrong with the ICHEIC process it was always assumed that the audit process would serve as a "safety-net" in identifying and correcting many problems. However, until very recently no independent audits of the companies had been concluded and several audits still remain to be conducted. As a result, no comprehensive appeals process has yet been put in place.⁴⁷ This has led to many claimants receiving "provisional" rejections with no recourse to appeal.

Furthermore, very serious questions are starting to be raised about the audit process itself, including whether the audits have been adequately supervised by the ICHEIC, whether the audit rules were adequately communicated to those conducting the independent audits and the extent

⁴⁶ E-mail from ICHEIC staff, March 25, 2002.

⁴⁷ "As a matter of procedure, a claimant can only appeal a claim where the member company has issued a final decision letter. Member companies can issue a final decision letter only after their audits have been satisfactorily completed." [Letter from Eagleburger to Congressman Henry Waxman dated April 11, 2002].

to which the auditors understand the ICHEIC process, the Holocaust-era insurance issue or even the nature of the work they are doing.

Following a Generali audit meeting in March 2002, a state regulator raised the following concerns with ICHEIC Chairman Eagleburger:

- Not all of Generali's business in Western Europe and its branch offices and subsidiary companies in Eastern Europe were included in the initial independent audit of the company. The Audit Committee was told a future audit would cover these additional companies, a redundancy which, as was pointed out to Chairman Eagleburger, would be both inefficient and costly;
- not all documents referred to in the company's audit report were made available to the Audit Committee for review;
- only Generali's own auditors examined the company's claims processing system; the ICHEIC's "independent" auditors apparently did not, nor did the independent auditors examine the claims processing procedures of the Generali Trust Fund (GTI) in Israel, which has been processing Generali's claims since November 2001. When asked about this the members of the Audit Committee were told by ICHEIC Vice Chairman Fitchew that the GTI was not subject to an audit but would be dealt with through "other arrangements" as per agreement with the chairman. However, the terms of this agreement, as well as the rules the auditors were working under, were withheld from the state regulators on the Audit Committee;
- the "independent" auditors examining Generali's records could not say whether the company's records were complete or not, a critical question considering that Generali is denying claims for policies that do not appear in the company's records (see examples above);
- when asked the auditors had no idea how many claims had even been filed, and;
- the ICHEIC "independent" auditor apparently had not examined the claims process but instead relied on **Generali's** auditors for this information.⁴⁸

At last report, the U.S. regulator was awaiting a response from the chairman.

■ **APPEALS:**

Chairman Eagleburger has ruled that claims already compensated through the BEG, etc. - regardless of the adequacy or fairness of the compensation - may not be reopened for further review and additional compensation. ["Any claim settled between a claimant and an insurance company will not be re-opened, even if the claimant would be entitled to a larger amount under the ICHEIC valuation guidelines."⁴⁹] For obvious reasons this has been a major issue for the companies.

However, ICHEIC Appeals President Judge Abraham Gafni recently ruled in an appeal against the decision of one of the ICHEIC companies that:

⁴⁸ Letter from California Department of Insurance to Lawrence Eagleburger dated March 21, 2002.

⁴⁹ Eagleburger Decision Memorandum, August 6, 1999.

The mere acceptance of an undisputed portion of a claim...does not reflect the automatic release of the balance of the claim, in the absence of other factors. These factors might include the payment of additional consideration for the balance of the claim or the knowing and voluntary relinquishment of the balance of the claim after the individual claimant has had her rights and options explained to her.⁵⁰

Judge Gafni concluded that on the basis of the facts presented to him there had not been “full and final settlement” on the policy at issue and therefore, the claimant’s appeal was sustained.

On this basis it would appear the rules of the ICHEIC may now be in flux.

⁵⁰ ICHEIC Newsletter, March 28, 2002.

A CASE STUDY

In 1933, Stanislaw W., an attorney living in Vilna, Poland, purchased a life insurance policy from a British insurance company doing business in pre-World War II Poland. On Dec. 2, 1942, the Nazis murdered Mr. W. in the killing fields of Ponary. Fifty-eight years later, the death benefits on his insurance policy were finally paid to his grandson. How did this come about?

From Poland, Mr. W's grandson discovered the OIC's web site (www.insurance.wa.gov) which lists 1,207 names of the policyholders of unpaid Holocaust-era policies from his grandfather's insurance company. As a result of the grandson filing a claim, last summer the company awarded the family £14,500 "in respect of the life insurance policy taken out...in Poland prior to World War II."

The significance of this story is that it demonstrates both what is good and what is wrong with present efforts to resolve unpaid Holocaust-era insurance policies. On one hand it shows that, as OIC has been arguing for several years and as Washington law has required since 1999, the key to resolving the tens of thousands of unpaid Holocaust-era insurance claims and potential claims is for European insurance companies to release and publish the names of their Holocaust-era policyholders enabling family members to learn of the existence of a policy. As the above example shows, **publishing names can lead to successful claims.**

While not a claimant from Washington state, Stanislaw's grandson benefited from the list OIC posted and our efforts to put him in contact with the company. As a result, a family in Poland has recovered the assets of its grandfather's insurance policy and, perhaps more importantly, has seen rare closure in his unfinished business from the Holocaust-era.

The sad fact is that this "success story" is an exception that highlights the woeful lack of significant progress in comprehensively resolving the many thousands of similar outstanding claims.⁵¹

Without the European insurance companies releasing and allowing the names of their policyholders to be published, the entire ICHEIC exercise will have to be considered a cruel and expensive failure; cruel in that it has raised expectations without providing the crucial *and necessary* information on unpaid policies that would help resolve many, though obviously not all, open questions.

The average claimant is 80 years old. For many, resolving these issues is a matter of personal closure. With the inevitable deaths of the claimants, researching policies will become even more difficult and the issue will fade from the public's radar. Perhaps that is what the participating companies always intended; it certainly is what many survivors believe.

If we allow that to occur, we will **all** have to live with our failure.

⁵¹ In fact, this was not the first or only claim paid as a result of this particular list being published on the OIC website. According to ICHEIC Vice Chairman Fitchew's letter dated 9/27/01 OIC was instrumental in having at least 25 offers worth \$550,000 in claims made from the list of this particular company's policyholder names OIC supplied to ICHEIC, in addition to several other claims that went directly to the company.

WHAT NEXT: CONCLUSIONS AND RECOMENDATIONS

■ The ICHEIC process is deadlocked by both process and politics. For example, because the ICHEIC companies have not agreed with some of Chairman Eagleburger's decisions (on confiscated policies and blocked accounts, etc.),⁵² they have withheld payments to fund the ICHEIC they committed to paying under the MOU, thereby effectively threatening to shut down the entire claims process. The companies have cited the fact that the ICHEIC has spent over \$40 million on salaries, advertising/outreach and other administrative expenses. (By contrast, offers of payments to survivors or the heirs of victims so far total \$14.8 million).⁵³ However, much of the ICHEIC's costs-to-date can be attributed to the need for the ICHEIC to conduct extensive independent research in lieu of having access to policyholder names not yet released by the companies. The ICHEIC staff has been quoted as saying there are no more funds for research, and yet if the companies do not release names, the only remaining source of additional names is through such research. The future of the ICHEIC therefore hinges on a successful resolution of the ICHEIC–German Insurance Association/German Foundation negotiations (see above).

On January 23, 2002, the ICHEIC companies (Allianz, AXA, Generali, Winterthur and Zurich, and the Association of the Dutch Insurers) signed a letter pledging to give Chairman Eagleburger “unfettered” authority to conclude negotiations with the German Foundation and to abide by his future decisions “on previously unresolved issues.”⁵⁴ And yet, a few weeks later, one of the companies announced that it would **not** abide by the Chairman's decisions - specifically his September 17, 2001, ruling on blocked accounts. A second company has also refused to honor claims for payments paid into blocked accounts until the ICHEIC's negotiations with the German Foundation are completed, as well as Chairman Eagleburger's decision on **minimum** payments for claims on German policies (as opposed to paying the **average** value of such policies).

In a “normal” process of this kind, there is discussion and negotiations leading eventually to a decision and the implementation of that decision. In the ICHEIC, nearly every “decision” or agreement is subject to interpretation and then re-interpretation by the companies - and sometimes by the ICHEIC staff - leading to non-implementation or only partial implementation followed by recrimination, further discussion and often paralysis. Rules agreed to (such as the publication of names) are often not upheld, resulting in a crisis of confidence and loss of public trust in the process.

⁵² On confiscated policies: “Valid claims on confiscated policies should be compensated in full like any other valid claim” (Eagleburger Decision Memorandum, September 29, 2000).

On blocked accounts: “Payments on blocked accounts should be handled under the general humanitarian section of the MOU [Memorandum of Understanding establishing the ICHEIC]” (ibid).

⁵³ In addition, the Generali Trust Fund (\$19,096,747 on 1,208 policies) and Dutch Soja Foundation (\$575,000 on 159 policies) have made additional offers bringing the total to over \$20 million.

⁵⁴ Company letter to Chairman Eagleburger signed by representatives of all five ICHEIC companies and the Association of Dutch Insurers, dated January 23, 2002.

It is therefore not surprising that after nearly three years, Congress has introduced legislation seeking alternatives to the ICHEIC and has held hearings on the progress and status of the ICHEIC, or that additional states like Arizona and Massachusetts continue to introduce and/or pass state legislation; there continues to be a growing loss of confidence in the ultimate success of the ICHEIC **as defined by its own criteria**: paying Holocaust-related insurance claims in a fair and expeditious manner.

As a minimal first step to reforming the ICHEIC process, every agreement made needs to be honored and fully implemented.

■ The NAIC has the ability to reform the ICHEIC process. The ICHEIC was created by the NAIC; 49 U.S. insurance commissioners signed the MOU establishing the ICHEIC in August 1998. Insurance Commissioners representing three states – New York, California and Florida – sit as members of the ICHEIC, and two more commissioners (representing Illinois and Pennsylvania) participate as observers. And yet, the process the NAIC helped to create has apparently allowed the companies participating in the ICHEIC to withhold information and often to renege on other agreements in a manner that would not be tolerated from domestic insurance companies.

The NAIC is uniquely positioned to help reform the ICHEIC process and make it more accountable, transparent and fair. For example, the American regulators on the ICHEIC have the ability, the credibility **and the authority** to conduct or at least oversee independent audits of the ICHEIC companies; after all, that is what insurance regulators do. Not to exercise greater oversight of the ICHEIC process would be an abdication of its responsibility and commitment to Holocaust victims and claimants residing in its members' states who will turn to their insurance commissioners for explanations and assistance should the ICHEIC process totally collapse.

When the NAIC established its International Holocaust Commission Taskforce, an “advise and consent” role for the other interested states was envisioned. Taskforce members would be consulted prior to ICHEIC meetings to define a joint NAIC position, and again after the ICHEIC meetings to debrief on any issues that may have come up. That vision has yet to be fully realized. Broader participation by Taskforce members leading to new ideas and a unified position (as was suggested by the NAIC's September 5, 2001 resolution) would serve to strengthen the role of the NAIC/U.S. regulators in the ICHEIC process.

For example, earlier this year the NAIC was asked by California to file a brief in support of California's Holocaust Victim Insure Relief Act (see above). Filing such a brief would have been entirely consistent with the language in the NAIC resolution calling on states to “make filings in relevant court cases involving the matter of unpaid Holocaust-era insurance claims.” The NAIC declined to do so, thereby weakening both the credibility and the moral force of its resolution.

Surely the NAIC can do better.

■ As noted above, “legal peace” removed one of the most significant tools of leverage against German corporations and financial institutions.

There was no urgency for the U.S. to prematurely sign an agreement that included the "legal peace" provision until Holocaust survivors were guaranteed fair and timely payments. Too many questions remained to be answered before signing away a "legal peace" that clearly benefits the companies without sufficient guarantees of fairness for survivors and claimants.

However, Judge Mukasey explicitly recognized the need for German insurers to follow the same standards as other companies in resolving claims, allowing Holocaust victims to restart their cases if the insurers did not quickly agree with the ICHEIC on how to settle claims and publish policyholder names. Chairman Eagleburger and/or the NAIC/U.S. regulators have the option of going to Judge Mukasey and asking that he consider reinstating the lawsuits against the German insurance companies, the argument being simple: the German companies have not honored the commitments they made in order to achieve "legal peace."

As one insurance regulator participating in the negotiations with the German insurers has observed, "The kind of chronic distrust between the parties at ICHEIC is as severe as ever...The companies continue to scuttle all aspects of discussion about their cost-reimbursement plan."⁵⁵

Perhaps the time to go back to Judge Mukasey has arrived.

⁵⁵ Illinois Insurance Director Nathaniel Shapo, "Regulators Threaten Lawsuit to Hasten Holocaust Payouts," BestWeek, February 25, 2002.